

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board concludes the Order for Compensation should be affirmed.

The Board finds it is more probably true than not claimant injured his right shoulder working for respondent, which manufactures tires. For approximately four years, claimant has built belt and tread packages. As claimant described the job, it is physical, repetitive, and requires overhead activities.

On the other hand, the Board concludes the evidence fails to establish that claimant sustained a new and separate accident or injury to his right shoulder when, sometime in May 2004, he reached for a soft drink at home and felt increased symptoms in his right shoulder. At this stage of the claim, the evidence fails to establish that the increased symptoms claimant experienced at home reaching for a soft drink constituted a new and separate accident as opposed to being a natural consequence or sequella of the repetitive traumas and injury he sustained at work.

The Board affirms the Judge's finding that claimant injured his right shoulder in an accident that arose out of and in the course of his employment with respondent.

As provided by the Workers Compensation Act, preliminary hearing findings may be modified upon a full hearing on the claim.¹

WHEREFORE, the Board affirms the October 8, 2004 Order for Compensation entered by Judge Avery.

IT IS SO ORDERED.

Dated this ____ day of December 2004.

BOARD MEMBER

c: John J. Bryan, Attorney for Claimant
John A. Bausch, Attorney for Respondent and its Insurance Carrier
Brad E. Avery, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

¹ K.S.A. 44-534a.